

# **GULF OF MEXICO FISHERY MANAGEMENT COUNCIL**

The Commons at Rivergate  
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Testimony of Wayne Swingle, Executive Director  
Gulf of Mexico Fishery Management Council  
Before  
The Subcommittee on Oceans and Fisheries of  
Senate Committee on Commerce, Science, and Transportation  
Washington, D.C.  
July 29, 1999

Madame Chairman and members of the Committee, I greatly appreciate the opportunity to appear before you to present the Council's progress in implementing the provisions of the Sustainable Fisheries Act (SFA), and to provide you with the Council's recommendations for amendments to the Magnuson-Stevens Act (MSA).

First, let me briefly acquaint you with the fisheries we manage, and the status of those stocks under the SFA. The crustacean fisheries we manage include shrimp, spiny lobster, and stone crab, none of which are overfished or have ever been. The Gulf shrimp fishery is the nation's most valuable fishery, having contributed 2.9 billion dollars to the GNP in 1989, and certainly more than that now.

We also preserve and protect the corals and coral reef resources and manage three finfish fisheries. Our reef fish fishery consists of more than 40 stocks of snappers, groupers, and related species and results in landings by recreational and commercial fisherman of about 30 million pounds annually. Red snapper is the principal snapper species and is classified as overfished. We have been rebuilding this stock since 1990, but with the new SFA standards, this task will extend well into the next century. Gag, a major grouper stock, was recently classified as approaching an overfished state. The Council took action within the last two weeks to reduce fishing mortality by about 17 percent, which should alleviate that condition. We have also prohibited harvest and possession of two other minor reef fish stocks (jewfish and Nassau grouper) that were classified as overfished in the early 1990s.

We also manage the fishery for coastal migratory pelagics species, such as mackerels, cobia, dolphin, etc. In this species complex only Gulf king and Spanish mackerels have been classified as overfished. We began the rebuilding program for these stocks in 1985 and have completely restored the Spanish mackerel stock and have nearly restored king mackerel. We also manage red drum, which is a major recreational fishery in all our states. This stock would have been restored by 2001 under the

current overfishing criteria, but it will take longer under the new SFA criteria.

In complying with the SFA, we developed two generic amendments that addressed those issues for our seven fishery management plans (FMPs). The first of these was an amendment that identified and described essential fish habitat (EFH) for the estuarine and marine life stages of the stocks in our FMPs. The amendment also discussed threats to EFH and management measures for enhancing EFH. NMFS partially disapproved the amendment, largely because we had diagrams depicting the estuarine and marine life stage distributions for only the 26 dominant stocks, rather than for all of them (Attachment 1). This distribution information for the minor stocks was not included because it was not available (Attachment 2). This amendment is currently under litigation filed by the Florida Wildlife Federation with the allegation that it does not comply with the SFA because it does not include management measures reducing the impact of gear on EFH.

The second generic amendment principally addressed bycatch, overfishing criteria, rebuilding periods, and fishing communities. This amendment has not yet been considered for approval by NMFS. Prior to completion of this document an amendment to our Shrimp FMP was implemented (May 1998) that reduces bycatch in that fishery by requiring shrimp vessels fishing the Gulf, off the Florida panhandle west to the Mexican border, to install bycatch reduction devices (BRDs) in the trawls. An amendment addressing shrimp trawl bycatch for the eastern Gulf is being prepared. Therefore, the generic amendment only describes the bycatch in other fisheries, which primarily consists of regulatory discards created by our management rules.

In the section on overfishing criteria, the Council acted conservatively by increasing our overfishing standard from 20 percent SPR (spawning potential ratio) to about 30 percent SPR to assure the stocks are managed at or above the MSY (maximum sustainable yield) level. The effect of these new standards, when approved, will likely be that several additional reef fish stocks will be classified as overfished and will require amendments to rebuild those stocks.

We have a fairly large number of coastal communities that likely would be classified as fishing communities. However, in gathering the U.S. Census data and other available information to characterize the economic and social structure of these communities, we found most of the data to be inadequate for that purpose, and certainly inadequate to assess impacts of management measures on the communities. We did call to the attention of Secretary Daley some actions that could be taken to make the U.S. Census data more useful for these purposes (Attachment 3).

As you can see from this discussion, the increased work load on the Councils from the SFA will carry over into the next several fiscal years. We call to your attention that the Administration proposed to increase the FY2000 allocation to the 8 Councils by only 2.3 percent, which will be inadequate to carry out that mandate.

I have appended the Gulf Council's recommendations of amendments needed under the re-authorization to the Magnuson-Stevens Act as Attachment 4, and we appreciate your consideration of these recommendations.

I thank you for this opportunity to testify on behalf of the Gulf Council.

**ATTACHMENT NO. 1**

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F/SER23:MB

Mr. Hal Osburn, Chairman  
Gulf of Mexico Fishery Management Council  
3018 U.S. Highway 301 North, Suite 1000  
Tampa, Florida 33619

Dear Hal:

This advises you that NMFS has partially approved the Generic Essential Fish Habitat (EFH) Amendment to the Fishery Management Plans of the Gulf of Mexico. All sections of the Amendment have been approved, except for sections 5.0. (Identification and Description of EFH) and 6.1 (Fishing Activities that may Adversely Impact EFH). NMFS approved only the EFH designation for the 26 selected species and coral complex in section 5.0 and only the fishing gear impact assessments on EFH discussed in the categories of trawls, recreational fishing, and traps in section 6.1.

I am asking that the Council place high priority on identifying and describing EFH for all non-selected managed species in a subsequent amendment as soon as possible. Additionally, the Council needs to describe and address the impacts of all fishing gears used in all EFH areas, also in future amendments. NMFS is committed to working cooperatively with the Council to complete the remaining work. NMFS expects to initiate a gear impact study this fiscal year, with emphasis given to trawl gear. Reports on the status of this research will be provided to the Council as the research progresses.

There appear to be errors in the text, tables and figures provided in the amendment. It appears that information provided by the SEFSC on gag grouper EFH was unintentionally omitted relative to the distribution of juvenile gag in Apalachee Bay, and there is no reference list for these fish. These errors should be corrected through errata sheets.

Explicit, regional research needs sections should be included in future EFH amendments to FMPs. Inclusion of this information will help identify data gaps and focus needed research to improve EFH identification and protection within the Gulf of Mexico. NMFS appreciates the

great effort expended by the Council to complete the Gulf EFH amendment in a timely manner. We look forward to continuing our close association with the Council in working to improving and refining EFH designations, and in identifying and addressing adverse impacts to EFH.

Sincerely yours,

Andrew J. Kemmerer  
Regional Administrator

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March 23, 1999

Dr. Andrew J. Kemmerer  
Regional Administrator  
National Marine Fisheries Service  
9721 Executive Center Drive  
St. Petersburg, Florida 33702

Dear Dr. Kemmerer:

The Gulf of Mexico Fishery Management Council (Council) has reviewed your letter dated February 8, 1999 concerning the partial approval of the Generic Essential Fish Habitat (EFH) Amendment to the Fishery Management Plans of the Gulf of Mexico. In Section 5.0, NMFS only approved EFH designations for the 26 selected species and coral complex. In Section 6.1, only the fishing gear impact assessments on EFH discussed in the categories of trawls, recreational fishing, and traps were approved. With this letter, the Council would like to comment on this partial EFH approval.

This Generic EFH Amendment was produced as a cooperative effort between the Council, the National Marine Fisheries Service, the Gulf States Marine Fisheries Commission, and the National Ocean Service. As stated in the Sustainable Fisheries Act, "NMFS, in consultation with participants in the fishery, shall provide each Council with recommendations and information regarding each fishery under that Council's authority to assist it in the identification of essential fish habitat, the adverse impacts on that habitat, and the actions that should be considered to ensure the conservation and enhancement of that habitat." This clearly states that it is NMFS's responsibility to provide EFH information to the Council.

The final draft, *National Marine Fisheries Service Essential Fish Habitat Recommendations to the Gulf of Mexico Fishery Management Council*, states on Page 2 that "The best available information was used that could be gathered in the time available for preparation of EFH descriptions. As additional information becomes available and as research results are produced, it is expected that the level of precision for designating EFH will be increased and that the appropriate FMPs will be amended accordingly." Specifically with regard to EFH designations the draft also states on Page 4 that "... even if maps of additional species were available, they would not encompass any habitat that is not already included and identified as EFH. EFH for the

remaining managed species will be addressed in future FMP amendments, as appropriate.” The Council would have included additional species EFH identifications and fishing gear impacts in the Amendment if this information had been provided or available but it was either not provided or unavailable. We reiterate that even if this data were available, they would not include any additional habitat that is not currently described as EFH for the selected species. It would be ludicrous for the Council to proceed with an additional amendment at this time and to attempt to specifically describe habitat of species for which such habitat is unknown especially when EFH has already been defined as all estuarine and marine habitat in the Gulf of Mexico (see page 22 of the Amendment).

Regarding impacts of fishing gear, the draft Recommendations on Page 11 state that “The NMFS understands that information is presently lacking in the Gulf of Mexico to draw definitive conclusions. As additional information becomes available, it should be included in the amendment.”

Concerning the errors in the amendment, the Council simply copied the tables that were provided by NMFS. When corrected information is provided to the Council, we will be happy to correct the problems.

As stated in the NMFS recommendations to the Council and in the Amendment, as future information concerning individual species’ EFH and fishing gear impacts on EFH becomes available, the Council will update the Amendment. Although your letter did not indicate a time frame for developing an update, it did include the terms “high priority” and “as soon as possible”. While the Council looks forward to working closely with NMFS in the effort to further identify and describe EFH and fishing gear impacts in the Gulf of Mexico, it is our view that the primary responsibility to initiate gathering and developing this information lies with NMFS. While Council staff will proceed with gathering additional information for updating the Amendment, the Council’s priority for this task will mirror that of NMFS, and we will proceed with appropriate amendments as data are made available.

Sincerely,

Hal Osburn  
Chairman

c: Gulf Council  
Tom Bigford  
Staff



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June 23, 1999

The Honorable William M. Daley  
Secretary of Commerce  
Hoover Building, Room 558  
14<sup>th</sup> and Constitution Avenues, N.W.  
Washington, D.C. 20230

Dear Mr. Secretary:

Pursuant to National Standard 8 of the Sustainable Fisheries Act, the Gulf of Mexico Fishery Management Council (Council) is required to assess the impacts of fishery regulations on fishing communities. In its Generic Sustainable Fisheries Act Amendment of several fishery management plans, the Council attempted to delineate the socioeconomic characteristics of fishing communities within the coastal counties of the five Gulf states. Census data for 1970, 1980, and 1990 was assembled by the Louisiana State University through a MARFIN-funded study and used for this purpose. Because the census data aggregated information for persons employed in agriculture, fishing, and mining industries, and aggregated information on self-employed persons for the farming, fishing, and forestry sectors, the data cannot be used to assess impacts of measures on communities or even to provide an adequate representation of fishing communities. **To this effect, the Council is requesting that for the year 2000 census, employment data in coastal counties should be collected and reported separately for fishing.**

We believe modifying the census for the coastal counties would be adequate to make the data set usable for fishery analyses related to fishing communities. We also feel it would be very advantageous if technical personnel within NMFS and NOAA were utilized to modify the census forms for the coastal counties so that the data are more appropriate in economically characterizing the communities. We sincerely hope for your favorable action on this matter that is of vital importance to all of the Councils.

Sincerely,

Hal Osburn  
Chairman

ABL:WES:lde

c: James Baker  
Penny Dalton  
Gary Matlock  
William Hogarth  
Council  
Regional Councils

Staff

**MAGNUSON-STEVENS ACT (MSA) REAUTHORIZATION ISSUES**

**GULF OF MEXICO FISHERY MANAGEMENT COUNCIL RECOMMENDATIONS**

- **Rescinding the Congressional Prohibitions on IFQs (or ITQs)**

Currently Section 303(d)(1) of MSA prohibits a Council from submitting or the Secretary approving an IFQ system before October 1, 2000. Section 407(b) prohibits the Gulf Council from undertaking or continuing the preparation of a red snapper individual fishing quota (IFQ) or any system that provides for the consolidation of permits to create a trip limit before October 1, 2000. If the reauthorization process is completed in 1999, the Council supports rescinding those provisions before the year 2000 deadline. The Council also opposes extending the moratorium on IFQs.

- **Regional Flexibility in Designing IFQ Systems**

The Council, while philosophically opposed to fees that are not regional in nature and dedicated by the Councils, is concerned over the ability of the overcapitalized fleets to pay fees. However, they do support the National Academy of Science (NAS) recommendation that Congressional action allow the maximum flexibility to the Councils in designing IFQ systems and allowing flexibility in setting the fees to be charged for initial allocations, first sale and leasing of IFQs [MSA Sections 303(d)(2-5) and 304(d)(2)].

- **Coordinated Review and Approval of Plan Amendments and Regulations**

The Sustainable Fisheries Act (SFA) amended Sections 304(a) and (b) of the MSA to create separate sections for review and approval of plans and for review and approval of regulations. This has resulted in the approval process for these two actions proceeding in different time periods, rather than concurrently as before the SFA Amendment, which also deleted the 304(a) provision allowing disapproval or partial disapproval of the amendment within the first 15 days. The Council and the Timely Review Panel recommend these sections be modified to include the original language allowing concurrent approval actions for plan amendments and regulations and providing for the initial 15-day disapproval process.

- **Regulating Non-Fishing Activities of Vessels**

The Council recommends that Section 303(b) of MSA be amended to provide authority to Councils to regulate non-fishing activities that adversely impact fisheries or essential fish habitat (EFH) by vessels. One of the most damaging activities to such habitat is anchoring of large vessels near habitat areas of particular concern (HAPC) or other EFH (e.g., coral reefs, etc.). When these ships swing on the chain deployed for anchoring in 100 feet, 20 to 70 acres of bottom may be plowed up by the chain dragging over the bottom. Regulation of this type of activity should be allowed.

- **Bycatch**

The MSA, under Section 405, Incidental Harvest Research, provided for conclusion of a program to (1) assess the impact on fishery resources of incidental harvest by the shrimp trawl fishery of the Gulf and South Atlantic, and (2) development of technological devices or other changes to fishing operations necessary to minimize incidental mortality of bycatch in the course of shrimp trawl activity, etc. Because this program has been the principal vehicle under which research and data collection has been carried out, the Council recommends that this program be extended and funded for another three years.

- **Gulf of Mexico Red Snapper Research (Section 407)**

The research provided for has been completed. This section also provides, in Subsection (c), that a referendum be conducted by the National Marine Fisheries Service (NMFS) of persons holding commercial red snapper licenses, to determine if a majority support proceeding with an IFQ program and in Subsection (d) makes the recreational red snapper allocation a quota and provides for closure of the fishery when that quota is reached. The Council recommends that both subsections be rescinded. The recreational fishery closure is having severe adverse economic impacts on the charter and head boat sectors. This year that fishery is projected to close on August 29. As the red snapper stock is being restored, the size of fish increases each year and the closure comes earlier each year, e.g., November 27 in 1997 to August 29 in 1999.

- **Collection of Economic Data [Section 303(b)(7)]**

**Situation:** Language throughout the MSA specifies the collection of biological, economic, and sociocultural data to meet specific objectives of the Act and for the fishery management councils to consider in their deliberations. However, Section 303(b)(7) specifically excludes the collection of economic data, and Section 402(a) precludes Councils from collecting “proprietary or confidential commercial or financial information.” However, NMFS should not be precluded from collecting such proprietary information so long as it is treated as confidential information under Section 402. Without this economic data, multi-disciplinary analysis of fishery management regulations is not possible, preventing NMFS/Councils from satisfying the requirements of the Act and of the Regulatory Flexibility Act (RFA). Economic data are required to meet the requirements of RFA and other laws, yet MSA restricts the economic information that can be collected under the authority of the MSA.

**Recommendation:** Amend the Act to eliminate these MSA restrictions on the collection of economic data. Amending Section 303(b)(7) by removing “other than economic data” would allow NMFS to require fish processors who first receive fish that are subject to the plan to submit economic data.

**Discussion:** Removing this current restriction will strengthen the ability of NMFS to collect necessary data and eliminate the appearance of a contradiction in the law requiring economic analysis without allowing the collection of necessary data. NMFS and the Councils need data to be able to comply with RFA, and we should not be prohibited from requiring it.

- **Confidentiality of Information [Section 402(b)]**

**Situation:** Section 402 replaced and modified former Sections 303(d) and (e). The SFA replaced the word “statistics” with the word “information” expanded confidential protection from information submitted in compliance with the requirements of an FMP to information submitted in compliance with any requirement of the MSA, and broadened the exceptions to confidentiality to allow for disclosure in several new circumstances.

**Recommendation:** The following draft language clarifies the word “information” in 402(b)(1) and (2) by adding the same parenthetical used in (a), and deletes the provision regarding observer information. The revised section would read as follows (additions in bold):

**(b) Confidentiality of Information.**

“(1) Any information submitted to the Secretary by any person in compliance with any requirement under this Act **and that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations shall not be disclosed**, except:

- a. to Federal employees and Council employees who are responsible for fishery management plan development and monitoring;
- b. to State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business of any person;
- c. when required by court order;
- d. when such information is used to verify catch under an individual fishing quota program; or
- e. when the Secretary has obtained written authorization from the person submitting such

information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act.”

The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement under this Act **and that would disclose proprietary or confidential commercial or financial information regarding fishing operations or fish processing operations**, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (1)(E).

- **Observer Programs**

Reaffirm support to give discretionary authority to the Councils to establish fees to help fund observer programs. This authority would be the same as granted to the North Pacific Council under Section 313 for observers.

- **Congressional Funding of Observer Programs**

**Situation:** Currently, the Secretary is not authorized to collect fees from the fishing industry for funding of observer programs. Funding of observer programs has been through MSA or MMPA appropriations.

The lack of adequate appropriations to run observer programs has resulted in statistically inadequate observer programs that do not satisfy the monitoring requirements of the statutes. This is of particular concern with regard to observer requirements that are a requirement or condition of an ESA biological opinion or a condition of a take reduction plan or take exemption under the MMPA. In addition, funding is taken from extremely important recovery and rebuilding programs to pay for the observer requirements. Consequently, investigations into fishing practices or gear modification (or other areas that would actually prevent the lethal take from occurring or causing serious injury in the first place) cannot proceed.

**Recommendation:** If the MSA is not amended to authorize the Secretary to collect fees from the fishing industry, then those fisheries that are required to carry observers as a condition of biological opinion under ESA, or as a condition of a take exemption under the MMPA, should be funded through the Congressional appropriations directed towards fisheries management under the MSA.

- **Defining Overfish and Overfishing [Section 3(29)]**

Currently, both overfished and overfishing are defined as a rate of fishing mortality that jeopardizes the capacity of a fishery to produce maximum sustainable yield (MSY) on a continuing basis. The Administration proposed redefining these to be consistent with NMFS’ guidelines in the guidelines for National Standard 1. The Council opposes this change and feels no change is needed.

- **State Fishery Jurisdiction**

The Council supports language in the Act to establish the authority of the states to manage species harvested in the exclusive economic zone (EEZ) that occur in both the state territorial waters and the EEZ, in the absence of a council fishery management plan similar to the language specified for Alaska in the last amendment to the Act.

- **Enforcement**

The Council supports the implementation of cooperative state/federal enforcement programs patterned after the NMFS/South Carolina enforcement cooperative agreement. While it is not necessary to amend the Act to establish such programs it is consistent with the changes needed to enhance management under the Act to

suggest to Congress that they consider establishing and funding such cooperative state/federal programs.

- **Council Member Compensation**

The Act should specify that Council member compensation be based on the General Schedule that includes locality pay. This action would provide for a more equitable salary compensation. Salaries of members serving in Alaska, the Caribbean, and Western Pacific are adjusted by COLA. The salary of the federal members of the Councils includes locality pay. The DOC has issued a legal opinion that prohibits Council members in the continental U.S. from receiving locality pay; therefore, Congressional action is necessary.

- **Emergency Rule Vote of NMFS Regional Administrator on the Council**

**Proposal:** Modify the language of Section 305(c)(2)(A) as follows (new language bolded):

(A) The Secretary shall promulgate emergency regulations or interim measures under paragraph (1) to address the emergency or overfishing if the Council, by unanimous vote of the members **(excluding the NMFS Regional Administrator)** who are voting members, requests the taking of such action; and...

Currently, the NMFS RA is instructed to cast a negative vote even if he/she supports the emergency or interim action to preserve the Secretary's authority to reject the request. The Council believes that Congressional intent is being violated by that policy.

- **Disclosure of Financial Interest and Recusal**

**Proposal:** Modify the language of Section 302(j)(2) as follows (new language bolded):

(2) Each affected individual must disclose any financial interest held by

- (A) that individual;
- (B) the spouse, minor child, or partner of that individual; and
- (C) any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee; in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery over which the Council concerned has jurisdiction, **or any financial interest in essential fish habitat (EFH).**

The Council feels an interest in EFH should be treated from an ethical point of view, the same as an interest in fishery operations, in determining whether a Council member should abstain from voting. The effect of this action would be to exclude the Council member who held interests in/or related to EFH from the provisions of Section 208 of title 18, USC, which would prevent that person from voting on habitat protection issues. However, if he/she were able to file a disclosure notice under 302(j) of the MSA they could vote unless that action would substantially change the financial interests of the member. This action would put them on the same basis as a person having an interest in a commercial harvesting, processing, or marketing activity.